

Hon. Robert S. Lasnik

10-CR-00385-EXH

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FEB 28 2012

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
DELBERT LEE WHETSTONE,)
Defendant.)

No. CR 10-385 RSL
PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Mark Parrent and Richard E. Cohen, Assistant United States Attorneys for said District, Defendant, Delbert Lee Whetstone, and his attorney, Peter K. Mair, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his plea of guilty to the following charges contained in the Indictment and Information:

1 a. Structuring Transactions to Avoid Reporting Requirements, as charged in
2 Count 1 of the Indictment, in violation of Title 31, United States Code, Section 5324(a)(3) and
3 Title 18, United States Code, Section 2, and

4 b. Distribution of a Controlled Substance, as charged in Count 1 of the
5 Information, in violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(C).

6 By entering these pleas of guilty, Defendant hereby waives all objections to the form of
7 the charging documents. Defendant further understands that before entering his pleas of guilty,
8 he will be placed under oath. Any statement given by Defendant under oath may be used by the
9 United States in a prosecution for perjury or false statement.

10 **3. Elements of the Offenses.**

11 a. The elements of the offense of Structuring Transactions to Avoid Reporting
12 Requirements, as charged in Count 1 , in violation of Title 31, United States Code, Section
13 5324(a)(3), are as follows:

14 First, that the defendant had knowledge of the currency transaction reporting
15 requirements;

16 Second, that the defendant knowingly and willfully caused the structuring of a
17 currency transaction;

18 Third, that the purpose of the structured transaction was to evade the currency
19 transaction reporting requirements; and

20 Fourth, that the structured transactions involved one or more domestic financial
21 institutions.

22 b. The elements of the offense of Distribution of a Controlled Substance, as
23 charged in Count 1 of the Information, in violation of Title 21, United States Code, Section
24 841(a)(1), are as follows:

25 First, the defendant knowingly and intentionally prescribed a controlled substance;
26 and

27 Second, the prescription was outside the scope of professional practice and not for
28 a legitimate medical purpose.

1 **4. The Penalties.** Defendant understands that the statutory penalties for the offenses
2 charged are as follows:

3 a. Count 1 of the Indictment (Structuring Transactions to Avoid Reporting
4 Requirements): Imprisonment for up to five years, a fine of up to \$250,000, a period of
5 supervision following release from prison of up to three years, and a special assessment of \$100.
6 If Defendant receives a sentence of probation, the probationary period could be up to five years.
7 Defendant agrees that the special assessment shall be paid at or before the time of sentencing.

8 b. Count 1 of the Information (Distribution of a Controlled Substance):
9 Imprisonment for up to 20 years, a fine of up to \$1 million, a period of supervision following
10 release from prison of at least three years, and a special assessment of \$100. If Defendant
11 receives a sentence of probation, the probationary period could be up to five years. Defendant
12 agrees that the special assessment shall be paid at or before the time of sentencing.

13 Defendant understands that supervised release is a period of time following
14 imprisonment during which he will be subject to certain restrictions and requirements.
15 Defendant further understands that if supervised release is imposed and he violates one or more
16 of its conditions, Defendant could be returned to prison for all or part of the term of supervised
17 release that was originally imposed. This could result in Defendant's serving a total term of
18 imprisonment greater than the statutory maximum stated above.

19 Defendant further understands that a consequence of pleading guilty may include
20 the forfeiture of certain property either as a part of the sentence imposed by the Court, or as a
21 result of civil judicial or administrative process.

22 Defendant agrees that any monetary penalty the Court imposes, including the
23 special assessment, fine, costs, or restitution, is due and payable immediately and further agrees
24 to submit a completed Financial Statement of Debtor form as requested by the United States
25 Attorney's Office.

26 **5. Rights Waived by Pleading Guilty.** Defendant understands that by pleading
27 guilty, he knowingly and voluntarily waives the following rights:

28 a. The right to plead not guilty and to persist in a plea of not guilty;

- 1 b. The right to a speedy and public trial before a jury of his peers;
- 2 c. The right to the effective assistance of counsel at trial, including, if
- 3 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 4 d. The right to be presumed innocent until guilt has been established beyond a
- 5 reasonable doubt at trial;
- 6 e. The right to confront and cross-examine witnesses against Defendant at
- 7 trial;
- 8 f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- 9 g. The right to testify or to remain silent at trial, at which trial such silence
- 10 could not be used against Defendant; and
- 11 h. The right to appeal a finding of guilt or any pretrial rulings.

12 6. **United States Sentencing Guidelines.** Defendant understands and acknowledges

13 that, at sentencing, the Court must consider the sentencing range calculated under the

14 United States Sentencing Guidelines, together with the other factors set forth in Title 18,

15 United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense;

16 (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the

17 seriousness of the offense, to promote respect for the law, and to provide just punishment for the

18 offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the

19 need for the sentence to protect the public from further crimes of the defendant; (6) the need to

20 provide the defendant with educational and vocational training, medical care, or other

21 correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the

22 need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity

23 among defendants involved in similar conduct who have similar records. Accordingly,

24 Defendant understands and acknowledges that:

- 25 a. The Court will determine his applicable Sentencing Guidelines range at the
- 26 time of sentencing;
- 27
- 28

1 b. After consideration of the Sentencing Guidelines and the factors in 18
2 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term
3 authorized by law;

4 c. The Court is not bound by any recommendation regarding the sentence to
5 be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by
6 the parties or the United States Probation Department, or by any stipulations or agreements
7 between the parties in this Plea Agreement; and

8 d. Defendant may not withdraw a guilty plea solely because of the sentence
9 imposed by the Court.

10 7. **Sentencing Factors** -- The parties make no agreement as to the applicable
11 Sentencing Guidelines calculations in this case and each party is free to present its proposed
12 calculations to the Court, which will make the final determination as to the applicable
13 Sentencing Guidelines range. The government agrees that it will recommend a sentence of no
14 more than 36 months imprisonment. Defendant agrees that he will recommend a sentence of no
15 less than 18 months imprisonment. The government's ultimate sentencing recommendation,
16 capped by the 36 month limit, will depend upon all of the factors of 18 U.S.C. § 3553 described
17 above, including any lack of significant criminal history as well as the extent and nature of the
18 defendant's acceptance of responsibility. Defendant understands, however, that at the time of
19 sentencing, the Court is free to reject any recommendations.

20 8. **Safety Valve Eligibility** -- If, at the time of sentencing, the United States is
21 satisfied Defendant has the requirements of the "safety valve" adjustment met each of these five
22 requirements, the United States will recommend a two-level reduction under U.S.S.G. §§
23 2D1.1(b)(16) and 5C1.2. Those provisions in general require: (1) Defendant does not have
24 more than one (1) criminal history point; (2) Defendant did not use violence or threats of
25 violence or possess a firearm or other dangerous weapon in connection with the offense; (3) the
26 offense to which Defendant is pleading guilty did not result in death or serious bodily injury; (4)
27 Defendant was not an organizer, leader, manager, or supervisor in the offense as determined by
28 the Sentencing Guidelines, nor was Defendant engaged in a continuing criminal enterprise; and

(5) not later than the time of sentencing, Defendant has truthfully provided to the government all information and evidence Defendant has concerning the offense to which Defendant is pleading guilty or concerning offenses that were part of that common scheme or plan. Defendant understands, however, that the Court will ultimately decide whether Defendant qualifies for any sentencing adjustment that comports with the safety valve provisions. Defendant also understands that whether he qualifies for any sentencing adjustment pursuant to the safety valve provisions will not effect the sentencing recommendations of the parties as set forth in paragraph 7.

9. **Drug Offenses.** Defendant understands that by pleading guilty to a felony drug offense, Defendant will become ineligible for certain food stamp and Social Security benefits under Title 21, United States Code, Section 862a.

10. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

11. **Forfeiture.**

a. Defendant agrees to forfeit to the United States immediately all of Defendant's right, title, and interest in funds totaling \$457,119.89 seized from BECU Account #3584995929 that is the subject of a forfeiture allegation in the original Indictment in this case pursuant to 31 U.S.C. § 5317.

b. Defendant also agrees to immediately abandon all right, title and interest in additional funds totaling \$406,654.73, more or less, specified in Paragraph 11(b)(i) and (ii) below and to withdraw his claim to these funds in settlement of the civil forfeiture case *United States v. \$37,582.23 et al.*, No. C11-0381 RSM pursuant to a stipulation to be filed in that case simultaneously with the filing of this Plea Agreement that will provide that the funds will be forwarded to the Internal Revenue Service, Department of the Treasury in satisfaction of Defendant's federal tax obligations pursuant to the terms described in Paragraph 11(c) below.

i. \$369,072.50, more or less, seized from a safe deposit box, and

ii. \$37,582.23, more or less, seized from the DOC business premises.

1 c. Defendant and the United States shall execute Closing Agreements that
2 cover all matters relating to Defendant's federal tax liability for the calendar years 2006 through
3 and including 2010. There will be no additional federal tax liability to Defendant as set forth in
4 said Closing Agreements, except that these Closing Agreements will be null and void if any of
5 the tax returns or financial statements submitted to the United States by the Defendant are false.
6 These Closing Agreements for the tax years 2006 through 2010 do not alter the Defendant's tax
7 obligations pursuant to assessments for the tax years prior to 2006.

8 **12. Statement of Facts.** The parties agree on the following facts. Defendant admits he
9 is guilty of the charged offense.

10 In August, 2010, the defendant operated his own private practice as a physician. In that
11 capacity, he directed staff members to deposit funds that represented proceeds of his physician
12 practice. Those funds included cash. The defendant took action to ensure that cash deposits did
13 not exceed \$10,000 into an account at the credit union BECU on any given day in order to evade
14 the government reporting requirements for large cash deposits.

15 In December, 2009, and January, 2010, the defendant agreed to treat a patient known to
16 him as "Kevin Murphy," an assumed name. The defendant provided three prescriptions to the
17 patient Murphy for the pain medication OxyContin, which contains the controlled substance
18 oxycodone. The defendant prescribed a total of 84 80 mg tablets of OxyContin containing a total
19 of 6.72 grams of oxycodone. The defendant agrees that the three prescriptions were outside the
20 scope of professional practice and not for a legitimate medical purpose.

21 The parties are free to present additional facts and circumstances to the Court. The
22 government's presentation will include evidence that the defendant treated additional patients
23 who obtained prescriptions for drugs containing oxycodone and other medications. The
24 government's presentation will include evidence that those prescriptions were outside the scope
25 of professional practice and not for a legitimate medical purpose. The government remains free
26 to provide any other information about the offenses as provided in paragraph 13 below.

27 **13. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the
28 United States Attorney's Office for the Western District of Washington agrees not to prosecute

1 Defendant for any additional offenses known to it as of the time of this Agreement that are based
2 upon evidence in its possession at this time, and that arise out of the conduct giving rise to this
3 investigation, including but not limited to criminal charges related to the federal income tax laws.
4 In this regard, Defendant recognizes the United States has agreed not to prosecute all of the
5 criminal charges the evidence establishes were committed by Defendant solely because of the
6 promises made by Defendant in this Agreement. Defendant agrees, however, that for purposes of
7 preparing the Presentence Report, the United States Attorney's Office will provide the
8 United States Probation Office with evidence of all conduct committed by Defendant.

9 **14. Acceptance of Responsibility.** The United States acknowledges that if Defendant
10 qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3E1.1(a), and if the
11 offense level is 16 or greater, his total offense level should be decreased by three levels pursuant
12 to USSG §§ 3E1.1(a) and (b), because he has assisted the United States by timely notifying the
13 authorities of Defendant's intention to plead guilty, thereby permitting the United States to avoid
14 preparing for trial and permitting the Court to allocate its resources efficiently.

15 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if Defendant
16 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and
17 Defendant may be prosecuted for all offenses for which the United States has evidence.
18 Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
19 Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant
20 also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any
21 objection to the re-institution of any charges in the Indictment that were previously dismissed or
22 any additional charges that had not been prosecuted.

23 Defendant further understands that if, after the date of this Agreement, Defendant should
24 engage in illegal conduct, or conduct that is in violation of his conditions of (examples of which
25 include, but are not limited to: obstruction of justice, failure to appear for a court proceeding,
26 criminal conduct while pending sentencing, and false statements to law enforcement agents, the
27 Pretrial Services Officer, Probation Officer, or Court), the United States is free under this
28 Agreement to file additional charges against Defendant or to seek a sentence that takes such

1 conduct into consideration by requesting the Court to apply additional adjustments or
2 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
3 advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated
4 advisory Guidelines range. Under these circumstances, the United States is free to seek such
5 adjustments, enhancements, departures, and/or variances even if otherwise precluded by the terms
6 of the plea agreement.

7 **16. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
8 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range that is
9 determined by the Court at the time of sentencing, Defendant waives to the full extent of the law:

10 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the
11 sentence, including any restitution order imposed; and

12 b. any right to bring a collateral attack against the conviction and sentence, including
13 any restitution order imposed, except as it may relate to the effectiveness of legal
14 representation.

15 Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion
16 pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the
17 Bureau of Prisons regarding the execution of his sentence.

18 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
19 attacking (except as to effectiveness of legal representation) the conviction or sentence in any
20 way, the United States may prosecute Defendant for any counts, including those with mandatory
21 minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.


22 **17. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
23 Agreement freely and voluntarily and that no threats or promises, other than the promises
24 contained in this Plea Agreement, were made to induce Defendant to enter of guilty.


25 **18. Statute of Limitations.** In the event this Agreement is not accepted by the Court
26 for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of
27 limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty
28 (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty

1 (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered
2 by the United States Attorney's Office.

3 19. **Completeness of Agreement.** The United States and Defendant acknowledge that
4 these terms constitute the entire Plea Agreement between the parties. This Agreement binds only
5 the United States Attorney's Office for the Western District of Washington. It does not bind any
6 other United States Attorney's Office or any other office or agency of the United States, or any
7 state or local prosecutor.

8 Dated this 27th day of February, 2012.

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11 
12 DELBERT LEE WHETSTONE
13 Defendant

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15 PETER K. MAIR
16 Attorney for Defendant

17 
18 MARK PARRENT
19 Assistant United States Attorney

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21 RICHARD E. COHEN
22 Assistant United States Attorney
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